McLean/Wierzbicki/Webster Decl., ¶ 62 & Att. 6. This argument is misplaced, for several reasons. First, the most valid flow-through comparison in any parity analysis is that between the total flow-through rate for VNJ's retail orders and the flow-through rate for CLEC orders. Because virtually all of VNJ's retail orders flow through its OSS after being released electronically by its service representatives, its retail flow-through rate is 100 percent – which substantially exceeds both the "combined" total CLEC flow-through rate cited by VNJ and the UNE flow-through rate. *See id.*, Att. 6.

68. Second, even under a comparison to States in the Verizon region where the Commission has approved Verizon's long-distance applications, its flow-through performance in New Jersey is plainly inadequate. As the following chart demonstrates, VNJ's flow-through rates for UNE orders in New Jersey have been vastly lower than those in States such as New York and Pennsylvania:

VNJ UNE Ordering – Percent Flow–Through (CLEC Aggregate) – 2001											
	Jan.	**Feb.**	**March**	**April**	**May**	**June**	**July**	**Aug**	**Sept.**	**Oct.**	**Nov.**
OR-5-01 % Flow Through – Total	10.07	25.34	22.95	22.47	21.39	33.83	38.45	31.50	38.37	44.86	47.84
OR-5-02 % Flow Through Simple	11.73	31.28	29.29	29.22	25.16	36.05	39.09	28.40	33.51	35.13	47.08
OR-5-03 % Flow Through Achieved	35.89	51.84	58.72	52.89	36.64	62.03	75.8	63.27	74.07	86.84	82.83

VNJ's flow through performance is even more alarming when compared to what it provides in New York and Pennsylvania, as shown in the following charts:

Verizon PA Percent UNE Flow - Through (CLEC Aggregate) – 2001 (OR-5-03 is not reported in Pennsylvania)											
	Jan.	**Feb.**	**March**	**April**	**May**	**June**	**July**	**Aug.**	**Sept.**	**Oct.**	**Nov.**
OR-5-01	44.49	55.50	58.97	54.02	64.65	66.54	72.04	72.03	77.60	73.96	80.84
OR-5-02	45.75	56.64	60.34	55.29	66.05	67.68	73.40	73.34	78.66	74.63	81.52

Verizon New York – Percent UNE Flow-Through (CLEC Aggregate) – 2001											
	Jan.	**Feb.**	**March**	**April**	**May**	**June**	**July**	**Aug.**	**Sept.**	**Oct.**	**Nov.**
OR-5-01	83.36	83.73	82.58	80.55	84.79	86.15	88.17	88.82	88.41	90.01	89.62
OR-5-02	84.32	84.41	83.30	81.53	85.67	86.96	89.12	89.47	88.96	90.88	not reported
OR-5-03	91.72	91.65	91.12	92.67	94.12	95.41	96.23	96.29	96.99	97.20	97.06

69. As these data show, VNJ's performance does not support any claim that it can adequately flow through UNE orders. Nor is VNJ's performance even at the level that Verizon met in New York and Pennsylvania at the time of its 271 application for those states. In New York, the total flow-through rates for UNE orders were 59.28 percent and 62.81 percent in August and September 1999, respectively. *New York 271 Order*, ¶166 n.512. In Pennsylvania, the total flow-through rates ranged from "about 54% to 66.5% from February through June 2001." *Pennsylvania 271 Order*, ¶ 49. The Commission concluded that these Pennsylvania UNE rates were "relatively low." *Id.* At the time of VNJ's application, by contrast, the most recent reported flow-through rate for UNEs was only 44.86 percent – approximately 10 points below the "relatively low" Pennsylvania rates. Such low flow-through rates are insufficient to support broad, mass-market entry.

70. Third, VNJ's attempt to compare its "combined" flow-through rate (that includes both resale and UNE orders) with that of other States in the Verizon region that have

received 271 approval is a transparent attempt to mask its inadequate UNE flow-through rate, and its failure to meet its OSS obligations with respect to UNEs. The table in VNJ's Application that sets forth VNJ's comparison shows that the UNE flow-through rate in New Jersey is far *lower* than the UNE flow-through rates in New York and Massachusetts at the time the applications for the latter two States were approved. As described in VNJ's own table, the UNE flow-through rate of 44.86 percent in New Jersey for October 2001 is more than 15 percentage points below the UNE flow-through rate of 60.32 percent in New York (in October 1999) and 63.85 percent in Massachusetts (in February 2001). McLean/Wierzbicki/Webster Decl., Att. 6.

71. Plainly, VNJ has used a comparison of "combined" flow-through rates because resale orders constitute the largest order volumes processed by its OSS in New Jersey. For example, in October 2001, approximately 70 percent of all CLEC orders processed by VNJ's OSS were resale orders. *See* McLean/Wierzbicki/Webster Decl., ¶ 66 & Att. 6. By contrast, as VNJ's own table show, the order mix in New York and Massachusetts was dramatically different; UNE orders in New York and Massachusetts constituted 84 percent and 75 percent, respectively, of all CLEC orders being submitted in those States at the time the applications were approved. See *id.*, Att. 6.

72. VNJ's attempt to "combine" flow-through rates is plainly improper. As previously stated, the Commission has held that a BOC's OSS must support each entry strategy established by the 1996 Act, and cannot favor one strategy over the other. Thus, the OSS VNJ must adequately support UNE-based entry strategy even if the OSS are already doing so for resale. VNJ cannot avoid this obligation by "combining" superior performance for resale orders with inferior performance for UNE orders. Such an approach is tantamount to an assertion that

VNJ can satisfy its OSS obligations simply by adequately supporting resale. If permitted, VNJ's approach would substantially impede local competition in New Jersey, because CLEC experience has shown that resale is not a viable mass-market entry strategy. In fact, the amount of resale activity in New Jersey is decreasing.

73. Even assuming that a comparison of the "combined" flow-through rate in New Jersey to any State where Verizon has previously received Section 271 approval is proper (and it is not), that State should be Pennsylvania. Pennsylvania is the State for which Verizon has most recently received Section 271 approval from the Commission. Furthermore, like New Jersey, Pennsylvania is in the former Bell Atlantic "footprint" and thus from the same area as the former Bell Atlantic systems, whereas New York and Massachusetts are part of the former NYNEX region.[34]

74. VNJ, however, did not include Pennsylvania in the State-by-State comparison of "combined" flow-through rates in its Application. *See id.*, Att. 6. VNJ had good reason not to do so. In Pennsylvania, the combined flow-through rate at the time the application for that State was approved was 70.83 percent – more than 10 percentage points *higher* than the combined rate of 60.26 percent for October 2001 in New Jersey.[35]

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[34] *See ex parte* letter dated January 4, 2002, from Clint E. Odom to Magalie Roman Salas, "Operations Support Systems Overview" at 24 ("January 4 *ex parte*") (stating that "The backend OSS in New Jersey are different than New York and Massachusetts. The backend OSS in New Jersey are the same as Pennsylvania, with the exception of the Service Order Processor").

[35] *See* McLean/Wierzbicki/Webster Decl., Att. 6. The combined rate of 70.83 percent for Pennsylvania was calculated using the performance data for July 2001 reported for Pennsylvania by Verizon and the same weighted average approach that VNJ used to calculate "combined" flow-through rates. The July 2001 data was the most recent data reported for Pennsylvania at the time the Commission approved the 271 application for that State; VNJ similarly used the most recent reported data available for New York and Massachusetts at the time of the approval of the

(...continued to next page)

75. Following the filing of its Application, VNJ belatedly included Pennsylvania data in a comparison of "combined" flow-through rates that it presented in a January 3, 2001 *ex parte* presentation to Commission Staff. Rather than use the October 2001 data for New Jersey set forth in its Application, VNJ used the flow-through data for New Jersey that it reported for November 2001 (which VNJ had not issued at the time the Application was filed). The November "combined" rate for New Jersey was 72.32 percent – higher than that in Pennsylvania, New York, or Massachusetts "at the same point in the 271 process."[36] However, the increase in the "combined" New Jersey rate from 60 percent in October to 72 percent in December resulted almost entirely from a reported (but unverified) increase in the *resale* flow-through rate (from 66.72 percent in October to 80.90 percent in November). By contrast, UNE flow-through rates in November increased only to 47.84 percent, as compared to 44.86 percent in October (nearly *25 percentage points* below the 72.04% UNE flow-through rate for Pennsylvania in July 2001), while the proportion of UNE orders in the combined "mix" decreased from that in October. *See* January 4 *ex parte*; McLean/Wierzbicki/Webster Decl., Att. 6. In short, VNJ's higher "combined" rate for November was the result of its vastly superior reported performance for resale orders – and another attempt by VNJ to use that performance to mask its failure to provide parity of access for CLECs using UNEs.

(...continued from previous page)
applications for those States. *Id.* In July 2001, the UNE flow-through rate in Pennsylvania (based on 87,218 observations) was 72.04 percent; the resale flow-through rate (based on 6,680 observations) was 55.03 percent. A table comparing the "combined:" rates of all four States is attached hereto as Attachment 3.

[36] *See ex parte* letter from Clint E. Odom to Magalie Roman Salas, dated January 4, 2002, "Operations Support Systems Overview," at 11 ("January 4 *ex parte*").

76. In any event, a State-by-State comparison of "combined" flow-through rates simply illustrates the inadequacy of VNJ's flow-through performance in New Jersey. One would reasonably expect, over time, that Verizon's UNE flow-through rates – whether the "combined" flow-through rate, the flow-through rate for UNE orders, or the flow-through rate for resale orders -- would increase significantly throughout its region, particularly given Verizon's purported "efforts to increase flow-through." McLean/Wierzbicki/Webster Decl., ¶ 66. The "combined" flow-through rate for New Jersey in October 2001, however, reflects little improvement over that in effect in New York two years ago, and in Massachusetts eight months ago. *See id.*, Att. 6 (showing "combined" New Jersey rate to be only 2.73 percentage points higher than October 1999 rate in New York, and 0.83 percentage points higher than February 2001 rate in Massachusetts). More disturbingly, VNJ's most recently reported "combined" rate at the time of the filing of its application was 10 percentage points *lower* than the July 2001 rate in Pennsylvania – even though one would expect the October 2001 "combined" rate to have been greater than, or at least equal to, the Pennsylvania rate.

77. Similarly, one would expect the UNE flow-through rate in New Jersey to be greater than the comparable rates in effect in New York, Massachusetts, and Pennsylvania at the time the Commission approved the 271 applications for those States. Yet, as noted above, the current UNE flow-through rate in New Jersey is far below not only those rates, but also the current UNE flow-through rates for each of these States – including Pennsylvania, where the November UNE flow-through rate was more than 30 percentage points higher than the rate for New Jersey.

78. VNJ has offered no credible evidence that its systems have the capability to flow through a high percentage of UNE orders at commercially reasonable volumes, notwithstanding its suggestion to the contrary. *See* Application at 63. VNJ simply suggests that orders will flow through if they are "properly formatted" by CLECs. Application at 63. VNJ's attempt to attribute its abysmally low UNE flow-through rates to "CLEC error," however, is misplaced. VNJ offered no factual support for this position in the State proceeding, and has offered none in its Application. Nor can "CLEC errors" explain why the UNE flow-through rate in New Jersey is so far below the rates in New York, Massachusetts, and Pennsylvania, if (as VNJ asserts) the OSS are similar in all of the States in its region. VNJ, for example, offers no evidence that CLECs are "properly formatting" orders in New York and Pennsylvania, but not in New Jersey.

79. Furthermore, as VNJ admits, there are a number of possible reasons (in addition to "CLEC errors") why orders do not flow through, including the decision of VNJ not to design the particular order type to flow through and errors in VNJ's systems. McLean/Wierzbicki/Webster Decl., ¶¶ 64, 66-68. LSRs can also fall out for manual processing even if the CLEC submits them in accordance with VNJ's OSS documentation, if the documentation is incorrect, incomplete, or unclear.[37] VNJ has submitted no data or analysis showing the proportion of manual fall-out due to "CLEC error" and the proportion due to other causes, although it certainly possesses the data that would enable it to do so. Instead, it simply cites the variation in flow-through rates among individual CLECs. *Id.*, ¶ 68.

[37] In fact, during its testing of the OSS KPMG frequently found VNJ's documentation to be defective, but then often simply accepted the explanation that VNJ offered or VNJ's assertion that it had corrected the problem.

80. In addition to its disregard of the numerous possible causes of manual fall-out unrelated to CLEC error, VNJ's CLEC-to-CLEC comparison ignores its own acknowledgment elsewhere that flow-through rates for a given period "depend in large part on the volume and mix of order scenarios and products requested, some of which are designed to flow through and some not." *Id.*, ¶ 66. Because order "mixes" and volumes vary considerably among CLECs, VNJ's simplistic comparison of individual CLECs' rates is no indication of the extent to which "CLEC errors" cause UNE orders to fall out for manual processing. VNJ suggests that manual fall-out of orders occurs, in part, because CLECs submit supplements to LSRs that change a previously-submitted LSR, and such supplements do not flow through. *See* McLean/Wierzbicki/Webster Decl., ¶ 67. Such supplements fall out for manual processing, however, because VNJ has not designed them to flow through. VNJ does not, and cannot, offer any justification for such a policy, particularly since it claims that it has already designed *other* types of supplements (such as supplements to cancel the order or change a due date) to flow through. *Id.* VNJ's implicit criticism of CLECs for submitting supplements to change orders borders on the frivolous. In any market, consumers will often change their minds after initially placing an order.

81. VNJ's poor flow-through performance for UNE orders is particularly disturbing because it is occurring with relatively small order volumes, and there is no credible evidence to suggest that VNJ will be able to flow through orders at commercially significant volumes. As previously indicated, KPMG did not test the flow-through capability of VNJ's OSS during its volume and stress tests on an end-to-end basis. Furthermore, Verizon's performance in

other states cannot be relied upon to predict its performance in New Jersey, since the SOP in VNJ's OSS is unique to New Jersey.

82. Nor is there any basis for concluding that VNJ has the resources necessary to ensure that it will adequately process the high volumes of UNE orders that will fall out for manual processing when CLECs provide service through UNEs on a mass-market basis, assuming that UNE flow-through rates continue to remain low. KPMG conducted only a limited evaluation of manual processing and staffing issues during its test. That evaluation did not include any examination of the linkage between VNJ's flow-through rate and its manual resource staffing plans, even though CLECs requested (unsuccessfully) that the test encompass such an examination.

83. If VNJ's OSS fail to achieve higher flow-through levels, VNJ will be faced with mounting numbers of non-flow-through orders that require human intervention and resources to process each order. The non-flow-through orders will inundate VNJ's work centers. If those work centers are inadequately staffed, VNJ will be unable to keep up with the processing of those orders. As a result, VNJ will be unable to process the orders and send status notices to CLECs on a timely basis. VNJ's failure to send timely status notices will cause CLECs to initiate trouble tickets or status inquiries with VNJ, the resolution of which will further tax VNJ's resources.

84. There is no reason to believe that VNJ will improve its flow-through performance for UNE orders if its Application is approved. VNJ's Application makes clear that it regards its current performance as adequate, even in the face of data showing that more than 50 percent of UNE orders fall out for manual processing. Moreover, the Performance Incentive Plan

("PIP") approved by the BPU provides for payment of penalties only if VNJ fails to meet the applicable benchmark for "achieved" flow-through rates -- not if the "total" flow-through rates are deficient. *See* Bloss/Nurse Declaration. Because the "achieved" flow-through rate is based only on the orders that VNJ has *already* designed to flow through, VNJ will have no incentive to provide flow-through capability for additional order types. By contrast, the PIPs in New York and Massachusetts impose penalties if Verizon fails to meet the applicable benchmarks for *either* "achieved" flow-through *or* total flow-through. *See, e.g., Massachusetts 271 Order*, ¶ 82 n.257.

85. The failure of the PIP to provide sufficient incentive to VNJ to design additional order types to flow through is a serious shortcoming. Many of the order types that currently are not designed to flow through are competitively significant to a CLEC. A copy of Verizon's latest flow-through document describing the orders that it has, and has not, designed to flow-through is attached hereto as Attachment 4. For example, as previously stated, supplemental orders to change a previous order in response to a customer request are not designed to flow through. Nor has VNJ provided flow-through capability for orders requesting expedited treatment and orders for partial migrations (*i.e.*, orders to switch some, but not all, of the lines of a customer – often a business — from VNJ to the CLEC). Because CLECs submit substantial volumes of these three order types to VNJ, their inability to flow through can adversely impact a CLEC's inability to compete. New CLEC customers requesting changes in their original order or seeking expedited treatment are unlikely to retain the CLEC as their carrier if the service is delayed, or is not provisioned as the customer specified when it made a change, as a result of manual processing. Similarly, if a VNJ customer elects to "take a chance" on a CLEC by transferring some of its lines to the CLEC to determine how the CLEC will perform, the customer

is likely to migrate back to VNJ if, due to manual processing of the partial migration order, it does not receive the service it requested.

B. Rejection Rates

86. VNJ's poor flow-through performance for UNE orders is matched by its rejection rates for such orders, which are commercially unreasonable by any standard. According to VNJ's monthly performance reports, since August the monthly rejection rates for UNE orders have consistently exceeded 40 percent: 44.58 percent in August, 41.97 percent in September, 44.70 percent in October, and 47.23 percent in November. The November rate represents the *highest* rejection rate that VNJ has reported for any month during 2001 – when even the lowest monthly rejection rate, for February, was 32.97 percent.

87. The rejection of nearly one-half of UNE orders is a denial of parity and substantially impairs a CLEC's ability to compete. When an order is rejected, it is returned to the CLEC, who must resubmit it. This process results in increased costs to the CLEC and delay in the provisioning of the order. VNJ's retail operations, by contrast, experience no such problems because, as previously described, edits in its systems will not even allow a retail order to be released until any errors have been corrected.

88. VNJ's rejection rates for UNE orders in New Jersey are dramatically higher than those in other States where VNJ has received Section 271 approval. For example, although VNJ's UNE rejection rate in October 2001 was 44.70 percent, the rates in New York, Pennsylvania and Massachusetts were 17.52 percent, 24.54 percent, and 23.24 percent, respectively. Similarly, VNJ's UNE rejection rate for November 2001 of 47.22 percent is more

than twice the level of the rejection rates in New York (15.14 percent), Pennsylvania (22.96 percent), and Massachusetts (19.90 percent) for the same month.

89. As in the case of flow-through, VNJ has offered no valid reason why its UNE rejection rate in New Jersey is so high. VNJ suggests that the high rejection rates occur because of the lack of "care with which a CLEC prepares its order," and cites the variations in rejection rates in New Jersey among CLECs. McLean/Wierzbicki/Webster Decl., ¶ 70. Other than citing this variation, however, VNJ offered no specifics or other factual data to support its claim, just as it provided none in the State proceeding. VNJ's explanation ignores the substantial disparity between the rejection rates in New Jersey and those of other States in Verizon's region. If "CLEC error" was the sole cause of rejections, the rates in New Jersey would be similar to – not substantially higher than – those in other States.

90. Furthermore, VNJ's suggestion of "CLEC error" ignores the fact that, like manual fall-out, order rejections can occur for a variety of reasons. For example, if VNJ's business rules or other documentation are erroneous, inadequate, or unclear, CLEC orders may be rejected regardless of how much "care" a CLEC exercises in preparing the order.

91. VNJ alternatively argues that its reported rejection rate "necessarily overstates the actual percentage of orders rejected," because the rate represents the ratio of orders rejected to orders with unique Purchase Order Numbers ("PONs"), rather than the percentage of all orders received that are rejected. Guerard/Canny/DeVito Decl., ¶ 60. VNJ, however, does not describe the extent to which the rejection rate is overstated, even though it has the data in its possession that would enable it to calculate the percentage of all orders received that are rejected. Nor does VNJ contend that the rejection rate in New Jersey is uniquely or

inordinately misstated compared to the other States in Verizon's region where rejection rates are reported.

C. Billing Completion Notices

92. VNJ has also rendered inadequate performance in providing billing completion notices to CLECs in a timely fashion. As the Commission has stated, "BCNs inform [CLECs] that all provisioning and billing activities necessary to migrate an end user from one carrier to another are complete and that the competitor can begin to bill the customer for service." *Pennsylvania 271 Order*, ¶ 43.

93. BCNs are critically important to a CLEC's ability to compete, because only until it receives a BCN will a CLEC know when it can properly begin billing its customer. Thus, if a CLEC begins billing a customer without having received a BCN, it risks that its customer will be billed prematurely, and that the customer will therefore receive a duplicative retail bill from VNJ and a separate bill for the CLEC for the same service. Such double-billing will result in customer dissatisfaction (which the customer will likely direct at the CLEC, since the problems did not exist before the customer migrated to the CLEC).

94. BCNs are also critical to the correct billing of a customer because VNJ does not stop its retail billing of a customer, and render a final bill, until its systems send a BCN to the CLEC. If the BCN is delayed or not provided, VNJ will erroneously continue billing the customer even if the billing systems have been updated – again resulting in double billing. As a result, VNJ's final bill to the customer will be too high, while the CLEC's bill will be understated. When the bills are finally corrected (so that VNJ eliminates the overcharges in its bill and belatedly releases the Daily Usage Records so that the CLEC can include the amount that it previously

underbilled in a subsequent bill), the CLEC's billing to the end-user may be so delayed, and so significant, as to antagonize the customer.

95. Just as importantly, if the billing systems have been updated but the BCN is late or missing, the CLEC will be paying VNJ for UNEs while it is unable to bill the customer for service. In other words, the CLEC will be incurring costs but, because of VNJ's failure to send a BCN, will not be receiving revenues to recover those costs.

96. The Commission has recognized that adequate provision of BCNs is part of a BOC's OSS obligations. In its *Pennsylvania 271 Order*, the Commission found that "Premature, delayed or missing BCNs can cause a competitor to double-bill, fail to bill or lose their customers." *Id.* Because untimely or incomplete BCNs (and PCNs) directly impact a CLEC's ability to serve its customers at the same level of quality that VNJ provides its customers, the Commission requires that a BOC such as VNJ must "demonstrate that it provides competing carriers with order completion notices in a timely and accurate manner." *New York 271 Order*, ¶ 187. VNJ, however, has not done so.

97. Under the applicable performance metric (OR-4-02), VNJ is required to transmit 97% of BCNs by noon of the next business day after the order completion is reflected in the SOP and the billing systems. Even that metric does not fully reflect inadequate performance by VNJ in the provisioning of BCNs, because it does not take into account any delays that might have occurred in the notification of the SOP by the billing systems, or malfunctions that preclude the SOP from receiving such information. Nor, because it measures only the timeliness of BCNs that are actually issued, does the metric encompass those situations where (as discussed below)

VNJ provided no BCN at all even though the order was completed and the billing systems were updated.

98. Despite the limited scope of the metric, VNJ has repeatedly failed to meet the 97 percent benchmark set by OR-4-02 for UNE orders. VNJ has, in fact, failed to meet this benchmark for UNE orders since June 2001, when it provided 97.89 percent of BCNs on time. The percentages reported by VNJ for July through November 2001 for OR-4-02 for UNE BCNs were:

Month	Percentage
July	96.02%
August	94.31%
September	96.41%
October	75.91%
November	95.24%[38]

99. VNJ's reported performance in October is particularly deficient, because VNJ failed to provide nearly 25 percent of BCNs on time during that month. VNJ asserts that this rate (and the decrease of nearly 20 percentage points from the September rate) resulted from a "one-time 'clean up' activity by Verizon" that uncovered approximately 4,000 orders which VNJ had received since January 2000, but for which VNJ had sent no BCNs. VNJ states that because OR-4-02 reports BCNs when they are sent, the BCNs were scored as "misses" in the month in which they were created (principally in October). *See* McLean/Wierzbicki/Webster

[38] *See ex parte* letter from Clint E. Odom to Magalie Roman Salas, dated January 2, 2002, at 138 ("January 2 *ex parte*") (Trend Report for OR-4-02).

Decl., ¶¶ 87-89; letter from Deborah Haraldson (VNJ) to Frederick C. Pappalardo (AT&T), dated December 7, 2001 ("December 7 letter") (attached hereto as Attachment 5).

100. VNJ's explanation is inadequate. In the first place, VNJ's explanation constitutes an admission that it previously failed to provide more than 4,000 BCNs on UNE orders. The BPU, in its rush to complete its review, never examined the underlying reasons for this deficiency or verified that the problem had, in fact, been corrected. This was typical of the BPU's emphasis on completing the proceeding on a pre-ordained schedule, rather than on emphasizing a rigorous and exhaustive review.

101. VNJ's admission that it did not send approximately 4,000 BCNs over a 20-month period indicates that VNJ's systems fail to ensure that BCNs have been sent at the time that the necessary billing updating has been accomplished, or to take corrective action, on a regular basis. VNJ plainly has the ability to design its systems to perform such tracking and corrections, since its "clean-up" was able to determine the BCNs that had not previously been sent during a 20-month period.

102. Second, because of VNJ's failure to send these 4,000 BCNs, it is likely that approximately 4,000 customers were billed by VNJ for services they were not receiving because VNJ completed the provisioning work necessary for CLECs to begin serving the customers.[39] This would be the equivalent of "slamming" 4,000 long-distance customers. Conversely, CLECs would not have been able to bill these customers correctly during those months. The CLECs

[39] *See* McLean/Wierzbicki/Webster Decl., ¶ 88 (stating that the orders "uncovered" in VNJ's "clean-up" were "orders that had been completed, but for which the chain of notifiers – Acknowledgement, Confirmation, Provisioning Completion, and Billing Completion – were incomplete").

would then have needed either to bill the customer for those past months (undoubtedly upsetting the customer) or absorb the loss (placing the CLEC at an unfair competitive disadvantage).

103. Third, VNJ's explanation for the 75.91 percent on-time performance in October does not explain its failure to meet the 97 percent benchmark for the other months beginning in July 2001 (including November).[40] In fact, VNJ's attribution of the low October rate to its "clean-up" activity is contrary to testimony that it gave before the BPU. There, in a supplemental declaration, VNJ attributed its failure to meet the benchmark for July through September to a "clear[ing] out [of] several hundred old notifiers." *See* Application, Appendix B, Tab 4. Now, in its Application to this Commission, VNJ describes the August and September results as "excellent" while attributing the October data to the "clean-up." McLean/Wierzbicki/Webster Decl., ¶¶ 87-89. *See also* December 7 letter at 2 (Attachment 5) (stating that VNJ's clean-up "occurred principally during the month of October, and does not affect data reported for OR-4-02 in prior months").[41]

104. VNJ attempts to minimize the seriousness of its failure to provide 4,000 BCNs by asserting that the problem "impacted less than one half of one percent of order activity in New Jersey over this time frame" (*i.e.*, January 2000 through October 2001). McLean/Wierzbicki/Webster Decl., ¶ 89. For the reasons stated above, however, the failure of

[40] Even the rates for those other months are overstated to the extent that VNJ failed to issue any of the 4,000 "missing" BCNs during those months, since all of the "missing" BCNs were taken into account in the rate reported for October. *See* Application at 64.

[41] VNJ's failure to provide approximately 4,000 BCNs in actual, end-to-end commercial performance of the OSS simply illustrates the shortcomings of KPMG's "piecemeal" approach to OSS testing. In its "functional evaluation" of the "pre-order/order domain," KPMG found that VNJ satisfied its criteria for the timely return of BCNs, and that all BCNs had been received. KPMG Report at 111, 124.

VNJ to send any BCN – much less thousands of BCNs – adversely affects a CLEC. VNJ's indifference to the adverse impact that its poor performance has on CLECs is indicative of its overall approach in New Jersey. Moreover, because VNJ has provided no description of the number of "missing" BCNs by month for each month of the time period in question, neither the Commission nor the CLECs can determine whether the problem is primarily a recent one, and whether the problem occurred only in certain months.

105. Rather this provide such data, VNJ has simply provided a "recalculation" of its October 2001 performance, arriving at an on-time percentage of 97.40 percent for UNE orders (and thereby satisfying the 97 percent benchmark) by "excluding orders from which completion notifications had been sent more than 30 days following completion." *Id.* VNJ, however, has provided no data or other basis to support this calculation. Nor has VNJ offered any justification for its "30-day-cutoff" in computing a revised rate. This arbitrary calculation cannot mask VNJ's overall poor performance in the provisioning of BCNs – a performance that is likely to be far worse when mass-market UNE-based entry occurs in New Jersey.

106. VNJ's performance stands in stark contrast to that of Verizon in New York. Even though the benchmark in New York (95 percent) is slightly more lenient than that in New Jersey, and the volumes of completed UNE orders are vastly greater than those in New Jersey, Verizon's reported on-time performance in New York under OR-4-02 has consistently exceeded 97 percent in 2001.[42]

[42] For example, Verizon's performance data in New York for OR-4-02 stated that in August 2001 it provided 99.73 percent of BCNs on time, based on 304,920 observations. During the same month, VNJ provided only 94.31 percent of BCNs on time, based on only 6,015 observations. In other words, VNJ was not even able to meet the more lenient New York standard of 95 percent, even though the volumes of UNE observations in New Jersey were only 2 percent of those in

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107. As in the case of the timeliness of BCNs, VNJ has also failed to meet the applicable standard for Performance Measurement OR-4-06, which measures the average time from work completion in the SOP to bill completion. For every month since June 2001, such average times have been consistently longer for CLECs than for VNJ – and have violated the standard of parity established by the BPU for this measurement. In fact, the disparity in average times in November was the largest reported in the last five months (12.10 hours for VNJ compared to 17.06 hours for the CLECs).

D. Billing Accuracy

108. VNJ has also frequently failed to provide nondiscriminatory performance under the performance measurements (BI-3-01- and BI-3-03) which measure the charges on the CRIS and CABS paper carrier bills that are adjusted for errors (as a percentage of dollars billed) and the number of adjustments resulting from billing errors.[43] For three of the past five months in which VNJ has reported data (July, September, and October 2001), the percentage of errors on CLEC paper bills has exceeded that on VNJ's retail bills. January 2 *ex parte* letter at 19 (Trend Report for BI-3). In September, the percentage of adjustments on CLEC bills was approximately

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New York. In October 2001, when VNJ's on-time percentage was only 75.91 percent (based on 9,474 observations), Verizon's on-time percentage in New York was 99.63 percent (based on 258,240 observations).

[43] *See* Guerard/Canny/DeVito Decl., ¶ 121; McLean/Wierzbicki/Webster Decl., ¶ 127 (stating that C2C measures "include 'paper' wholesale bills only"). BI-3-03, which excludes charges adjusted due to billing errors resulting from subsequent order activity and lead to post completion discrepancies, has a standard of parity with retail. BI-3-01, which includes such adjustments, is diagnostic only. *See* Guerard/Canny Decl., ¶ 121. However, the error rate for CLECs was higher than the error rate for VNJ retail for both BI-3-01 and BI-3-03 in July, September and October. VNJ failed to meet the BPU's parity standard for BI-3-03 in all three months.

13.8 percent, as opposed to the rate of approximately 1.6 percent for VNJ's retail bills. *Id.*; Guerard/Canny/DeVito Decl., Att. 1.

109. Both in its Application and in the 271 proceedings before the BPU, VNJ has attempted to attribute its poor performance to unusual events, such as an adjustment that VNJ made in September "to correct an over-billing covering several months to a single CLEC." McLean/Wierzbicki/Webster Decl., ¶ 126. VNJ has previously also attributed its July performance to unusual events.[44] These various explanations, however, ring hollow in view of VNJ's failure to meet the parity requirement even in October. Moreover, VNJ's attribution of the plainly discriminatory September error rate for CLEC bills (which was more than 13 percentage points higher than the August rate) to a problem involving a single CLEC is highly suspect, since this error rate is measured against the base of the entire CLEC industry.

110. Accurate wholesale billing is essential to a CLEC's ability to compete. Inaccurate bills not only affect a CLEC's wholesale costs, retail revenues, and profitability, but also can result in inaccurate billing to CLEC customers. VNJ, however, has not provided bills to CLECs with the same degree of accuracy that it provides in its own retail operations. This clearly a denial of parity.

111. Indeed, recent statements by VNJ cast further doubt on its ability to provide accurate and complete wholesale bills. On January 9, 2001, the BPU advised VNJ that it had made a finding that VNJ complied with item 2 of the competition checklist, "conditioned on Verizon charging no more than the new UNE rates to all CLECs in New Jersey effective

[44] *See also* Supplemental Declaration of VNJ in BPU Docket No. TO01090541, ¶ 103 (Application, Appendix B, Tab 4) (attributing July rate to a "clean-up associated with the billing correction that removed Directory Advertising charges from wholesale accounts").

December 17, 2001."[45] In a response to the BPU dated January 10, 2001, VNJ stated that "Broad changes to the billing rate structure require extensive software reprogramming," "despite our best efforts, errors or omissions in the updating process are possible," and "certain discrete categories of charge changes ... may be especially difficult to capture in the updating process."[46] Moreover, VNJ stated that certain rate changes "will not likely be reflected until the first or second bill after the software implementation is completed." Attachment 7 hereto, at 1. In light of VNJ's statements, there is no basis for concluding that VNJ's systems will generate wholesale bills that accurately reflect the newly-prescribed UNE rates.[47]

E. Loop Provisioning

112. VNJ has rendered poor performance in other areas. For example, although VNJ asserts that its performance in provisioning loops in New Jersey has been "excellent across the board" (Application at 26), its reported data contradict its claim. In its performance reports from August through November 2001, VNJ has frequently missed a number of provisioning metrics or submetrics for loops.

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[45] *See* letter from Henry Ogden (Acting Secretary, BPU) to Bruce D. Cohen (VNJ), dated January 9, 2002 (Attachment 6 hereto).

[46] *See* letter from Bruce D. Cohen (VNJ) to Henry Ogden (Acting Secretary, BPU), dated January 10, 2002, at 2 (Attachment 7 hereto).

[47] VNJ's January 10th letter promises that, given the possibility of errors or omissions in its updating process, it will "work cooperatively" with CLECs and "effect remedies" to correct any errors on bills. *See* Attachment 7 hereto, at 2. VNJ's promises of future compliance with its OSS obligations, however, are irrelevant to the time of its current compliance. Moreover, even if VNJ subsequently adjusts bills due to errors or omissions in the updating process, VNJ will still assess a late payment fee against any CLEC who disputed the overcharge and did not pay it by the deadline imposed in the original bill.

113. VNJ's discriminatory performance has included its failure, throughout 2001, to provide parity of service with respect to the average interval offered to CLECs for installation of "hot cut loops" where no dispatch is required, (the vast majority). In both instances, VNJ's performance for CLECs was substantially short of the required parity benchmark. *See* January 2 *ex parte* at 145, 147 (Trend Reports for PR-1-01 and PR-2-01). In addition, the rate of missed appointments for facilities-based orders has consistently been higher for loop orders than for VNJ's analogous retail orders, despite the parity requirement established by the BPU for such performance. *Id.* at 156 (C2C Trend Report for PR-5-01).

114. VNJ also has rendered discriminatory performance in the provision of 2-wire xDSL loops. For example, from April through November 2001, the average offered intervals and average completed intervals for such loops where no dispatch is required have consistently been much longer for CLECs than for VNJ's own retail operations. *Id.* at 170 Trend Report for PR-1-01 and PR-2-01).[48]

115. VNJ's discriminatory performance with respect to loop provisioning has a significant anticompetitive impact on CLECs. Such discrimination precludes CLECs from offering and providing service to customers as quickly and reliably as VNJ can in its retail operations. This discrimination directly affects end-user customers, who will be reluctant to wait

[48] VNJ's performance has also been discriminatory in the provisioning of 2-wire digital services. For example, since April 2001, VNJ has failed to meet the BPU's parity requirement (as defined by the BPU) for all but one month with respect to the percentage of missed appointments (facilities). January 2 *ex parte* at 166 (Trend Report for PR-5-01). In each month of 2001, the percentage of missed appointments was higher for CLECs than for VNJ retail. *Id.* Similarly, VNJ failed to provide parity with respect to the percentage of installation troubles reported within 30 days from April through October 2001. *Id.* at 167 (Trend Report for PR-6-01).

for CLECs to provide service when they need not endure the same delay to receive service from VNJ itself.

CONCLUSION

116. VNJ has not shown that it providing the nondiscriminatory access to its OSS that the 1996 Act requires. KPMG's testing does not show, and does not provide "persuasive evidence," that VNJ complies with its OSS obligations, since KPMG's test did not include volume testing on the OSS on an end-to-end basis. This shortcoming in the KPMG test is especially egregious in view of the fact that VNJ's OSS uses a Service Order Processor that is unique to New Jersey.

117. Even the limited commercial data reported by VNJ shows that, contrary to the "clean bill of health" issued by KPMG, VNJ's OSS suffer from serious deficiencies that deny parity of access to CLECs. The data show, for example, that VNJ's systems reject almost 50 percent of UNE orders; that more than 50 percent of non-rejected UNE orders fall out for manual processing; that VNJ fails to provide billing completion notices in an a timely manner; that VNJ's bills to CLECs are less accurate than its bills to its own retail customers; and that VNJ's provisioning of loops is discriminatory. In view of these facts, parity of access simply cannot be said to exist.

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on January 14, 2002

Robert J. Kirchberger

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Dated: January 14, 2002

E. Christopher Nurse